was repealed in 1909. Subsequently a very large assessment was used as the basis of taxing the relator. The latter carried the case to the United States Supreme Court on the ground that the repeal was unconstitutional, being a law impairing the obligation of contracts. *Held* that the repeal was constitutional. *People on the Relation of Troy Union R. R. Co.* v. *Mealy*, U. S. Sup. Ct., Oct. Term, 1920, No. 63.

For a discussion of the principles presented by this case, see NOTES, p. 541, *supra*.

CONSTITUTIONAL LAW — PRIVILEGES AND IMMUNITIES — RIGHT TO RESIDE PEACEFULLY IN A STATE — Defendants were indicted in the federal district court for Arizona, under Section 19 of the Criminal Code, which provides for the punishment of any conspiracy to deprive a citizen of "any right or privilege secured to him by the Constitution or laws of the United States." Defendants had rounded up several hundred alleged "Reds," including some who were citizens of Arizona, and some who were citizens of other states, and had "deported" them to New Mexico, under threat of death should they ever return to Arizona. *Held*, that the indictment be quashed. *United States* v. *Wheeler*, U. S. Sup. Ct., October term, 1920, No. 68.

As the acts complained of were those of individuals, and not of a state, no attempt to sustain the indictment under the Fourteenth Amendment could be successful. *United States* v. *Cruikshank*, 92 U. S. 542; *Hodges* v. *United States*, 203 U. S. 1. But it was urged that Article IV, Section 2, of the Constitution extended federal protection to such an invasion of fundamental rights as was here involved. A few decisions appeared to sanction this view. *United States* v. *Blackburn*, 24 Fed. Cas., No. 14,603; see *Crandall* v. *Nevada*, 6 Wall. (U. S.) 35, 49; see *Twining* v. *New Jersey*, 211 U. S. 78, 97. By the weight of authority, however, this provision of the Constitution protects only against state action, and not against action by individuals. *United States* v. *Harris*, 106 U. S. 629; *Le Grand* v. *United States*, 12 Fed. 577. Nor does it apply unless there has been discrimination based on state citizenship. *Slaughter-House Cases*, 16 Wall. (U. S.) 36; *La Tourette* v. *McMaster*, 104 S. C. 501, 89 S. E. 398. A statute attempting to extend the federal protection to situations such as this has been held unconstitutional. *United States* v. *Harris*, *supra*. The principal case is in accord with the great weight of authority.

CONTRACTS — ANTICIPATORY BREACH — PLACE WHERE CAUSE OF ACTION ARISES. — The defendant corporation was under contract with the plaintiff to manufacture and ship goods in Pennsylvania for transportation to Ohio. It repudiated further performance by a letter mailed in Pennsylvania to the plaintiff in New York. The plaintiff brought this action in New York. Under the code the plaintiff must prove that the cause of action arose in New York, in order to establish the court's jurisdiction. *Held*, that the court has jurisdiction. *Glynn* v. *Hyde-Murphy Co.*, 184 N. Y. Supp. 462.

A cause of action for a breach of contract arises at the place where there is a failure of the performance promised. *Hibernia National Bank* v. *Lacombe*, 84 N. Y. 367. This failure must be where the parties intended performance to take place. But the doctrine that repudiation of future performance may be a breach introduces an exception. *Wester* v. *Casein Co.*, 206 N. Y. 506, 100 N. E. 488. For repudiation is a breach at a time and place never contemplated by the contract, unless of course there is an implied promise not to repudiate. Such an implied promise is correctly found in a contract to marry. *Frost* v. *Knight*, L. R. 7 Ex. 111. But it cannot be found, without distortion, in ordinary commercial contracts. *Daniels* v. *Newton*, 114 Mass. 530. The principal case strikingly illustrates the inconsistencies which spring from the doctrine of anticipatory breach. Granting that doctrine, it seems correct to require actual

communication to the promisee rather than to hold the breach complete where the promisor sends a message, as was done in *Wester* v. *Casein Co.*, *supra*. This rule is necessary in view of the cases holding that no repudiation is a completed breach until acted on by the promisee. See *Rubber Trading Co.* v. *Manhattan Rubber Co.*, 221 N. Y. 120, 116 N. E. 789; *Zuck* v. *McClure & Co.*, 98 Pa. 541. See 3 WILLISTON, CONTRACTS, § 1332.

CONTRACTS — RESTRAINT OF TRADE — VALIDITY OF RESTRICTION AGAINST COMPETITION IN EMPLOYMENT CONTRACT. — The plaintiff carried on business at K., as a draper, tailor and general outfitter. He entered into a contract with the defendant to employ him as head cutter subject to dismissal upon a month's notice. The defendant agreed that upon the termination of his employment he would not thereafter carry on the trade of tailor, draper, haberdasher or milliner at any place within a radius of ten miles of K. Later the defendant set up business as a tailor in breach of the covenant. The plaintiff prays an injunction according to the tenor of the defendant's covenant. *Held*, that the injunction be denied. *Attwood* v. *Lamont*, [1920] 3 K. B. 571.

It is generally agreed that a contract unreasonably restraining trade will not be enforced. Accordingly an employer is not entitled to a covenant going beyond what is necessary to prevent the employee from exploiting trade secrets and the good will of the business. *Eastes* v. *Russ*, [1914] 1 Ch. 468; *Morris* v. *Saxelby*, [1916] 1 A. C. 688. On the other hand reasonable restraints are valid. *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473, 13 N. E. 419; see *Mumford* v. *Getling*, 7 C. B. (N. S.) 305, 319. And even though a contract is wider than is permitted, if it is divisible the courts will enforce the valid portion of it. This is true where the restraint in the aggregate covers an excessive territory. *Smith's Appeal*, 113 Pa. St. 579, 6 Atl. 251; *Trenton Potteries Co.* v. *Oliphant*, 58 N. J. Eq. 507, 43 Atl. 723. So also where the number of occupations embraced is too great. *Bromley* v. *Smith*, [1909] 2 K. B. 235. Apparently the principal case would come under this head. But recent English cases have shown great hostility to contracts restricting the freedom of action of discharged employees and have thrown doubt on the rule of severance as applied to such contracts. See *Goldsoll* v. *Goldman*, [1914] 2 Ch. 603, 613; *Mason* v. *Provident Clothing & Supply Co.*, [1913] A. C. 724; *Morris* v. *Saxelby*, *supra*. But *cf. Eureka Laundry Co.* v. *Long*, 146 Wis. 205, 131 N. W. 412. The reason for distinguishing between contracts of employees and those of vendors is found in the weakness of the bargaining position of the former. Following this trend of the law the court in the principal case refuses to regard the illegal contract as divisible and refrains from carving out one that the employer might legally have made. The tone of the opinion is paternal. But the equitable rules as to mortgages, fraud and penal bonds show this is no novelty to a court of equity.

CORPORATIONS — CORPORATE POWERS AND THEIR EXERCISE — VALIDITY OF DONATIONS BY A CHEMICAL COMPANY TO UNIVERSITIES AND SCIENTIFIC INSTITUTIONS. — The defendant company was incorporated to engage in the manufacture of chemicals. The stockholders by resolution authorized a large donation to the universities and scientific institutions of the country in furtherance of scientific education. It appears as a fact that the donation would increase the supply of scientifically trained men available for the company's employment. The plaintiff seeks to enjoin the donation as *ultra vires*. *Held*, that the proposed donation is valid. *Evans* v. *Brunner, Mond, & Co.*, [1920] L. J. 432 (Ch. D.).

It is well settled that a corporation has in addition to its main powers such implied and incidental powers as are needful and appropriate to effectuate its express purposes. *People* v. *Pullman Co.*, 175 Ill. 125, 51 N. E. 664; *Central*